

TAB 8B

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

| | | |
|-------------------------|---|-------------------|
| | x | |
| | : | |
| THE CITY OF HUNTINGTON, | : | Civil Action |
| | : | |
| Plaintiff, | : | No. 3:17-cv-01362 |
| | : | |
| v. | : | |
| | : | |
| AMERISOURCEBERGEN DRUG | : | |
| CORPORATION, et al., | : | |
| | : | |
| Defendants. | : | |

| | | |
|---------------------------|---|-------------------|
| | x | |
| | : | |
| CABELL COUNTY COMMISSION, | : | Civil Action |
| | : | |
| Plaintiff, | : | No. 3:17-cv-01665 |
| | : | |
| v. | : | |
| | : | |
| AMERISOURCEBERGEN DRUG | : | |
| CORPORATION, et al., | : | |
| | : | |
| Defendants. | : | |

BENCH TRIAL - VOLUME 7
BEFORE THE HONORABLE DAVID A. FABER, SENIOR STATUS JUDGE
UNITED STATES DISTRICT COURT
IN CHARLESTON, WEST VIRGINIA

MAY 11, 2021

1 in the last six months."

2 Do you see that?

3 **A.** Yes.

4 **Q.** Were you aware that in February or around February of
5 2018 the DEA added a new feature to ARCOS to allow companies
6 like McKesson, Cardinal, and ABDC for the first time to view
7 the number of competitors who sold a particular controlled
8 substance to a prospective customer in the last six months?

9 Were you aware of that?

10 **A.** No.

11 **Q.** It goes on to say in the next paragraph, and I'm about
12 halfway down, "This new tool will provide valuable
13 information for distributors to consider as part of their
14 assessment."

15 Do you see that?

16 **A.** Yes.

17 **Q.** Were you aware that prior to 2018 distributors did not
18 have this tool of viewing the number of competitors who had
19 sold a particular controlled substance to a prospective
20 customer in the last six months? Were you aware of that?

21 **A.** I wasn't aware of the existence of the tool, so I'm not
22 aware of the absence of it before this date.

23 **Q.** Are you aware that the DEA has been criticized for not
24 sharing ARCOS data with distributors earlier than this point
25 in time?

1 **A.** No.

2 MR. SCHMIDT: Your Honor, we would move this into
3 evidence.

4 THE COURT: Any objection?

5 MR. MOUGEY: No, Your Honor, we don't have any
6 objection.

7 THE COURT: It's admitted.

8 BY MR. SCHMIDT:

9 **Q.** Dr. McCann, changing gears, I want to focus on
10 Huntington and Cabell now if we may.

11 You understand that ABDC, Cardinal, and McKesson were
12 not the only distributors that shipped opioids into Cabell
13 County and Huntington?

14 **A.** Yes.

15 **Q.** According to the ARCOS data you reviewed, 36 different
16 distributors other than the three defendants in this
17 courtroom supplied oxycodone and hydrocodone to Huntington
18 and Cabell during the time period that you looked at;
19 correct?

20 **A.** I don't recall the, the number that you state, 36, but
21 there were others, most of them quite de minimis quantities,
22 but there were roughly -- and visually what I see is sort of
23 a listing that goes on for most of a page, so 36 would sound
24 right.

25 **Q.** Okay. Let's look at that listing. You included that

1 as an appendix to your report; correct?

2 **A.** I may have.

3 **Q.** Okay. Let's take a look at it so you're not flying
4 blind.

5 Could we put up Page 748 of Appendix 9.

6 MR. SCHMIDT: And, Your Honor, I don't intend to
7 move this into evidence because it's part of his expert
8 report, but I'll just pass out copies if that's useful if I
9 may approach.

10 THE WITNESS: Thank you.

11 BY MR. SCHMIDT:

12 **Q.** Thank you, Dr. McCann.

13 This is the table I was referring to, Dr. McCann. This
14 might have been the table you were thinking of. If you look
15 here, it shows oxycodone -- let me see if I can write on the
16 screen.

17 It shows oxycodone and hydrocodone. It's got a total
18 MME and then it has marketing share, and it has the actual
19 volume of MME for the different companies.

20 Do you see that, sir?

21 **A.** Yes.

22 **Q.** And if we start after the three defendants and continue
23 down, you'll see on your copy it actually continues to the
24 next page and that's 36 pharmacies, correct, or 36
25 distributors? I apologize.

1 **A.** Yes. Most of them are effectively zero -- 0.0 percent,
2 but, yes, they're all listed there.

3 **Q.** And to that point, if we could go back to the first
4 page, please, Mr. Reynolds.

5 If we start counting the MMEs for those distributors,
6 we very quickly get close to 200 million MMEs; correct?

7 **A.** For all of the ones after the top three?

8 **Q.** Yes, sir.

9 **A.** I haven't done that, but that may be the case.

10 **Q.** If you need to do it, if you question the
11 representation, go ahead. But you can see very quickly 41,
12 33, 33, already you're over 100; 25, 21, 15 already you're
13 at 150, and then it goes on. Do you see that?

14 **A.** Yes.

15 **Q.** Okay. So it's close to 200 million. It's not 200
16 million, but it's close to 200 million; correct?

17 **A.** Correct.

18 **Q.** That's not a de minimis amount of oxycodone and
19 hydrocodone from those distributors that are not present in
20 this trial in this courtroom; correct?

21 **A.** Right. I was referring to the bottom half of this
22 list. But you're right, there are --

23 **Q.** Thank you, sir.

24 **A.** -- four or five other distributors that distributed
25 between one and four percent.